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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,233	10/28/2003	Harold H. Greenberg	3003-A-6	4954

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EXAMINER

LAUX, JESSICA L

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/695,233	Applicant(s) GREENBERG ET AL.	
	Examiner Jessica Laux	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 10-16 and 19-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 17, 18 and 23-34 is/are rejected.
- 7) ☒ Claim(s) 1, 2, 4-8 and 26-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/29/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Species 1 – Figure 1

Species 2 – Figure 2

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

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case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. Von Hellens on January 31, 2006 a provisional election was made with traverse to prosecute the invention of Species I, claims 1-9, 17-18 and 23-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-16 and 19-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

Claims 1-2, 4-8, 26-30 are objected to because of the following informalities:

In regards to claim 1: Line 7 recites the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 2: Line 2 recites the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 4: Line 2 recites the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 5: Line 1 recites the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 6: Lines 2 and 3 recite the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

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In regards to claim 7: Line 1 recites the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 8: Line 1 recites the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 26: Line 6 recites the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 27: Line 2 recites the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 28: Lines 2 and 3 recite the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 29: Line 1 recites the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

In regards to claim 30: Line 1 recites the limitation "said lintel". There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567).

In regards to claim 1: A wall structure having an above ground wall, said wall structure comprising in combination: a) a plurality of footings disposed at least partially in the ground at each end of said wall (Figure 1; 16 and 17); b) said wall including a lintel receiving support (Figure 1 – the bottom block place directly on footings 16 and 17) at each end from said footings and a plurality of courses extending upwardly from said lintel (Figure 1); and d) at least one further tensioning rod extending upwardly from within each footing (66) and adapted for resisting tilting of said wall. Gravier et al. does not teach at least one tensioning rod extending upwardly from said lintel into said wall. Greenberg teaches a wall structure wherein post tensioning rods are positioned at predetermined interval along the fence and are imbedded at one end in a footer and extend upwardly through the wall (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structure, as taught by Gavier et al., to have post tensioning rods extending through the wall, as taught by Greenberg, as the rods provide additional support to the wall.

In regards to claim 2: The wall structure as set forth in Claim 1 above, including a plate (Figure 1 – the bottom block place directly on footings 16 and 17) disposed on each of said footings for supporting an end of said lintel.

In regards to claim 3: The wall structure as set forth in Claim 1 above, including a post extending from each of said footings (Figure 1; 12 and 13), said at least one

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further tensioning rod extending upwardly into said post (Figure 1; 66), said post including a vertical slot for receiving an end of said wall (Figure 1).

In regards to claim 4: The wall structure as set forth in Claim 3 above, including a plate (Figure 1 – the bottom block place directly on footings 16 and 17) disposed on each of said footings for supporting said post and said lintel.

In regards to claim 5: The wall structure as set forth in Claim 4 above, wherein an end of said lintel extends into said slot of said post (Figure 1, wherein the lintel is depicted as elements 14 and 15).

In regards to claim 6: The wall structure as set forth in Claim 3 above, including at least one rebar disposed longitudinally within said lintel and grout (Col. 4, lines 41-43) for imbedding said rebar and a lower end of said tensioning rod within said lintel.

Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567) and further in view of Wallin (5864999).

In regards to claim 7: Gravier et al. in view of Greenberg teaches the wall structure as set forth in claim 1 above, but does not teach that the lintel is generally C-shaped in cross section. Wallin teaches the use of a C-shaped lintel (9 and 10; Figures 6 and 8) in a wall structure.

In regards to claim 8: The wall structure as set forth in Claim 7 above, wherein said lintel includes a longitudinally oriented upwardly facing opening (Figures 6 and 8).

In regards to claim 9: The wall structure as set forth in Claim 8 above, wherein said tensioning rods extend upwardly through said opening (Figure 11).

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In regards to claim 17: The wall structure as set forth in Claim 1 above, wherein said courses comprise concrete masonry units (Greenberg – Col. 2, lines 50-51).

In regards to claim 18: The wall structure as set forth in Claim 1 above, wherein said courses comprise bricks having at least one passageway there-through. Gravier et al. in view of Greenberg does not teach the use of bricks. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to use bricks have at least one passageway because Applicant has not disclosed that the use of bricks provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected the masonry units of the prior art, and applicant's invention, to perform equally well with either the masonry units or the claimed brick because both would provide a suitable wall structure. Therefore it would have been prima facie obvious to modify Gravier et al. in view of Greenberg to obtain the invention as specified in claim 18 because such a modification would have been considered a mere design consideration with fails to patentably distinguish over the prior art.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567) as applied to claims 1-9 and 17-18 above.

These claims recite the basic steps of “developing footings”, “installing tension rods”, “ placing plates”, “building a post”, “placing a lintel”, “laying courses of brick or masonry”, and “installing tensioning rods into the wall”. As such, they merely recite the obvious method of forming the wall structure as recited in claims 1-9 and 17-18.

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Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567).

In regards to claim 26: A wall structure having an above ground wall, said wall structure comprising in combination: a) a plurality of footings disposed at least primarily in the ground at each end of said wall (Figure 1; 16 and 17); b) said wall including a lintel receiving support (Figure 1 – the bottom block place directly on footings 16 and 17) at each end from said footings and a plurality of courses extending upwardly from said lintel; d) a post extending from a respective one of said plurality of footings (Figure 1; 12 and 13) for supporting an end of said wall, said post including a vertical slot for receiving the corresponding end of said wall (Figure 1); and e) at least one further rod (Figure 1; element 66) extending upwardly from within each a respective one of said plurality of footings into the respective one of said posts and adapted for resisting tilting of said post. Gravier et al. does not teach at least one tensioning rod extending upwardly from said lintel into said wall. Greenberg teaches a wall structure wherein post tensioning rods are positioned at predetermined interval along the fence and are imbedded at one end in a footer and extend upwardly through the wall (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the structure, as taught by Gravier et al., to have post tensioning rods extending through the wall, as taught by Greenberg, as the rods provide additional support to the wall.

In regards to claim 27: The wall structure as set forth in Claim 26 above, including a starter course (Figure 1 – the bottom block place directly on footings 16 and

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17) disposed on the respective one of said plurality of footings for supporting an end of said lintel.

In regards to claim 28: The wall structure as set forth in Claim 26 above, including at least one rebar disposed longitudinally within said lintel and grout (Col. 4, lines 41-43) for imbedding said rebar and a lower end of said rod within said lintel.

Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al. (5623797) in view of Greenberg (4726567) and further in view of Wallin (5864999).

In regards to claim 29: Gravier et al. in view of Greenberg teaches the wall structure as set forth in claim 26 above, but does not teach that the lintel is generally C-shaped in cross section. Wallin teaches the use of a C-shaped lintel (9 and 10; Figures 6 and 8) in a wall structure.

In regards to claim 30: The wall structure as set forth in Claim 29 above, wherein said lintel includes a longitudinally oriented upwardly facing opening (Figures 6 and 8).

In regards to claim 31: The wall structure as set forth in Claim 30 above, wherein said tensioning rods extend upwardly through said opening (Figure 11).

Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gravier et al (5623797) in view of Greenberg (4726567).

These claims recite the basic steps of “developing footings”, “installing rods”, “building posts”, “locating a lintel”, “laying courses of brick or masonry”, and “installing rods through the wall”. As such, they merely recited the obvious method of forming the wall structure as recited in claims 26-31.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 5794921, 5501057, 3512759, 6431797, 6632048.

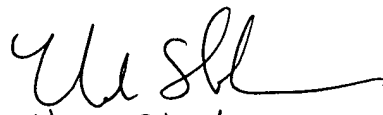
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Friday, 8:30am to 4:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JL
02/02/06



Nade Slack
Primary Examiner